

HOUSE BILL 351

By Hardaway

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 1, Part 1; Title 37, Chapter 2, Part 4 and Title 47, Chapter 50, Part 1, relative to foster care, adoption and termination of parental rights.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-1-102(1), is amended by deleting the current subdivisions (D) and (E) in their entirety and by substituting instead the following:

(D) For purposes of this subdivision (1), “willfully failed to support” or “willfully failed to make reasonable payments toward such child's support” means the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child. A person who has attempted to support a child but who has been prevented by the acts of others or circumstances beyond the person’s control has not willfully failed to support a child;

(E) For purposes of this subdivision (1), “willfully failed to visit” means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation. A person who has attempted to visit a child but who has been prevented by the acts of others or circumstances beyond the person’s control has not willfully failed to visit a child;

SECTION 2. Tennessee Code Annotated, Section 36-1-102(1), is further amended by inserting the following as a new subdivision (F) thereto and by redesignating the subsequent subdivisions accordingly:

(F) A person who has filed a petition in a court of competent jurisdiction to gain custody of such person’s child within the four (4) month period has demonstrated the person’s intent not to abandon the child. Such demonstrated intent supersedes any

failure on the part of the parent to support or visit the child during the four (4) month period.

SECTION 3. Tennessee Code Annotated, Section 36-1-113(q), is amended by deleting the current language in its entirety and by substituting instead the following:

(q) After the entry of the order terminating parental rights, no party to the proceeding, nor anyone claiming under such party, may later question the validity of the termination proceeding by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound thereby, except based upon the timely filing of an appeal of the termination order as may be allowed by law; and in no event, for any reason, shall a termination of parental rights be overturned by any court or collaterally attacked by any person or entity after one (1) year from the date of the entry of the final order of termination except pursuant to such an appeal. This provision is intended as a statute of repose.

SECTION 4. Tennessee Code Annotated, Section 37-2-402(5), is amended by deleting the first sentence of that subdivision in its entirety and by substituting instead the following:

“Foster care” means the temporary placement of a child by either the child’s parents or by another party in the custody of any agency, including the department of children’s services, any institution or home whether public or private, or any other agency, for care outside the home of a parent or relative, by blood or marriage, of the child, whether such placement is by court order, voluntary placement agreement, surrender of parental rights, other arrangement facilitated by a private placement agency, or otherwise.

SECTION 5. Tennessee Code Annotated, Section 37-2-402(10), is amended by deleting the current subdivisions (D) and (E) in their entirety and by substituting instead the following:

(D) For purposes of this subdivision (10), “willfully failed to support” or “willfully failed to make reasonable payments toward such child's support” means the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child. A person who has attempted to support a child but who has been prevented by the acts of others or circumstances beyond the person’s control has not willfully failed to support a child;

(E) For purposes of this subdivision (10), “willfully failed to visit” means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation. A person who has attempted to visit a child but who has been prevented by the acts of others or circumstances beyond the person’s control has not willfully failed to visit a child;

SECTION 6. Tennessee Code Annotated, Section 37-2-402(10), is further amended by inserting the following as a new subdivision (F) thereto and by redesignating the subsequent subdivisions accordingly:

(F) A person who has filed a petition in a court of competent jurisdiction to gain custody of such person’s child within the four (4) month period has demonstrated the person’s intent not to abandon the child. Such demonstrated intent supersedes any failure on the part of the parent to support or visit the child during the four (4) month period.

SECTION 7. Tennessee Code Annotated, Section 37-2-403(a)(2)(A), is amended by inserting the following language between the third and fourth sentences of that subdivision:

The statement shall clearly outline the parties’ responsibilities regarding visitation and payment of support and any penalties for failure to abide by those responsibilities on the part of either the natural parents or the foster parents. The statement shall include an

assessment of the ability of the natural parent or parents to pay child support and shall state that such support is excused for cause if the primary stated reason for placement of the child is the financial circumstances of the natural parent or parents. In no event shall such statement condition visitation on the payment of child support. If a natural parent is voluntarily placing the child in foster care, the statement shall include a statement that the placement is temporary and that the parent has the right to seek to regain custody of the child.

SECTION 8. Tennessee Code Annotated, Section 47-50-112, is amended by inserting the following as a new subsection (d) thereto:

(d) Notwithstanding anything in this section to the contrary, it shall be an affirmative defense to the enforcement of any written contract that the contract was written in a language that was not the native language of a party to the contract and that such circumstance resulted in reasonable doubt that the person understood his or her legal rights and responsibilities under the contract.

SECTION 9. This act shall take effect upon becoming a law, the public welfare requiring it.